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*Attorneys for Defendant**Wayfair LLC***UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

DARRYL GAINES,

Plaintiff,

v.

WAYFAIR, LLC and JOHN DOES 1-5
AND
6-10,

Defendants.

Civil Action No. 1:21-cv-15843-KMW-
EAP*Via ECF***Declaration of Shellie Weber**

I, **Shellie Weber**, being of full age, declare as follows:

1. I make this Declaration in support of Defendant Wayfair LLC's ("Wayfair" or the "Company") Motion for Summary Judgment to dismiss the Complaint of Plaintiff Darryl Gaines ("Plaintiff" or "Gaines") with prejudice in its entirety.

2. Since August of 2019, I have worked for Wayfair in its Talent Management department, which is what Wayfair calls human resources or

HR.

3. Before joining Wayfair, I worked in HR for numerous organizations and companies. In fact, I have worked in HR since in or about 2004.

4. I have a Professional in Human Resources certification, and am a Certified Professional with the Society for Human Resources Management. I also have a Master's in Human Resources and a Bachelor's of Science in Business Administration.

5. I am currently employed by Wayfair as a Senior Regional Manager, Talent Management. I have held this position since March of 2022.

6. Before I was a Senior Regional Manager, I held the position of Manager, Talent Management.

7. Among other things, my job duties for Wayfair include managing a full-service Talent Management team encompassing all HR functions in the Northeast Region (which includes New Jersey as well as numerous other states), partnering closely with regional operations leadership to define and execute business strategy, and being responsible for all aspects of HR onsite while providing support across global fulfillment network.

8. Based on my Talent Management position within Wayfair, I have

access to certain personnel information about Wayfair's employees, including but not limited to, the warehouse associates that work at Wayfair's warehouse facility located in Cranbury, New Jersey. This is the same location that Plaintiff worked during his employment with Wayfair.

9. Specifically, based on my review of the applicable personnel information, Wayfair terminated thirteen other warehouse associates for reporting to work with COVID-19 symptoms in or around the relative same time frame that it employed Plaintiff.

10. I understand that in this lawsuit Gaines alleges that Wayfair terminated him because he had COVID-19. This is not true. Wayfair does not terminate associates that test positive for COVID-19 provided those associates follow its COVID-19 policies.

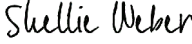
11. I further understand that Gaines came into work with symptoms of COVID-19, and that as a result Wayfair discharged him for not following its COVID-19 policies.

12. Attached and incorporated as **Exhibit A** is a true and accurate copy of the relevant pages of Wayfair's Employee Guide.

13. Attached and incorporated as **Exhibit B** is a true and accurate copy of Wayfair's Statement Prohibiting Harassment of Employees.

14. Attached and incorporated as **Exhibit C** is a true and accurate copy of Wayfair's COVID-19 policy effective August 10, 2020.

I declare under penalty of perjury that the foregoing is true and correct.

DocuSigned by:

DA62480D5D13446...
Shellie weber

3/7/2024

Executed on March ____, 2024

EXHIBIT A

Wayfair Employee Guide

Version date: December 2020

to, demotion, promotion, transfer, compensation, benefits, duties, and location of work, at any time, with or without cause or advance notice.

Neither this Guide, the Addendums to this Guide, Wayfair practice, nor other oral or written policies or statements of Wayfair or its agents shall create a contract of continued employment, guarantee a definite term of employment, or otherwise modify in any way the agreement and understanding that employment with Wayfair is at-will. No representative of Wayfair, except Wayfair's CEO in a writing signed by the CEO and the employee, has any authority to enter into any agreement contrary to the policy of at-will employment. This Guide is not intended to take the place of more detailed benefit plan documents, and in the event of conflict with those plan documents, the latter shall be deemed controlling. Additionally, if there is ever a discrepancy between this Guide and applicable law, then the law always will govern.

Equal Employment Opportunity

Do you know what word is most commonly used to describe the culture at Wayfair by its employees? Collaborative. We value and rely on the diversity of our employees, customers, community, and suppliers and their collective voices to help guide us as we build a better Wayfair – and experience – for all. Every voice, every perspective matters. If there is a role that excites you, we want to hear from you.

We're a community of innovators, risk-takers, and trailblazers who celebrate our differences, and know that our unique perspectives make us stronger, smarter, and well-positioned for success. We do not tolerate direct or indirect discrimination of any kind. It is the policy of Wayfair, Inc. to ensure equal employment opportunity without discrimination or harassment on the basis of race, color, sex, religion, national origin, citizenship, pregnancy, sexual orientation, gender identity, gender expression, age, disability, genetic information, military status, political belief or any other protected characteristic as protected by law.

Wayfair prohibits and will not tolerate any such discrimination or harassment by supervisors or employees. And it is the responsibility of all staff in their daily actions, decisions, and behavior to ensure that they do not discriminate against colleagues, customers, suppliers or any other person associated with Wayfair. **We will not tolerate harassment of our employees by anyone, including vendors, candidates, or customers.**

The policy of **Equal Employment Opportunity and non-discrimination applies to all policies and procedures** relating to recruitment, hiring, training, evaluation, promotion, compensation, benefits, transfer, layoff, termination and all other privileges and conditions of employment.

Employees' questions or concerns relating to Equal Employment Opportunity, discrimination and harassment, should be referred to Talent Management. Appropriate disciplinary action will be taken against any employee violating this policy.

Further, Wayfair will take affirmative actions to improve the employment of minorities and Vietnam-era veterans. As a measure of creating awareness, Wayfair will include the statement,

‘Equal Opportunity Employer’ in all advertisements and job postings.

Employee Privacy Notice

We care about our employees and know that your privacy is important to you. We adhere to the principle that your personal information should be collected only for legitimate business purposes; shared only with those who need and are allowed access; protected in accordance with internal security policies and privacy laws; and retained only as long as necessary. We also must ensure that third parties with access to your personal information are contractually obligated to protect it.

This Employee Privacy Notice (the “Notice”) is our way of telling you how, in the context of your working relationship with Wayfair, we collect your information, why we need it, and how we use it. The Notice takes effect on January 1, 2020.

It is important that you read and retain this Notice. This Notice does not form part of any contract of employment or any other contract to provide services.

Scope of Application

This Notice applies to current and former employees, contractors, and other workers of Wayfair LLC.

What Information We Collect and How We Process It

During your working relationship with Wayfair, we will collect and process the following information about you:

- Your name and contact details (such as job title, mailing addresses, telephone numbers, and email addresses);
- Additional personal information (such as date of birth, gender, marital status, emergency contact information, and social security number);
- Payroll information (such as bank account details, payroll records, and tax status information);
- Benefits information (such as salary, bonus, remuneration, annual leave, pension and benefits information);
- Dates and location of employment and information about termination (including related recordings or documents);
- Recruitment information (such as copies of right to work documentation, references, background check details, education/qualifications, and other information included in a CV or resume);
- Employment records (such as work history, working hours, training records, terms of employment or engagement, and performance, grievance, and disciplinary information); Other information (such as passport information, information about dependents and next of kin, correspondence and information from or about you, and records of your use of our information and communication systems).

We primarily process this information to allow us to perform the contract we have with you and to help us comply with legal obligations to which we are subject. For example, we process your information for these purposes when we determine the terms on which you work with us; provide and administer your benefits; evaluate your performance and make decisions about compensation and advancement; ensure compliance with our internal policies; and maintain network and information security.

EmployeeInvestigations@wayfair.com

Policy Against Sexual Harassment and Other Workplace Harassment

Purpose

Wayfair believes in respecting the dignity of every employee and expects every employee to show respect for all our colleagues, clients, associates, and vendors. Respectful, professional conduct furthers Wayfair's mission, promotes productivity, minimizes disputes, and enhances our reputation. Accordingly, this policy forbids any unwelcome conduct that is based on an individual's race, color, religion, sex, gender (which includes gender identity or expression, transgender identity, pregnancy, childbirth or related medical condition, and gender stereotyping), national origin, age, disability, ancestry, medical condition, marital status, military or veteran status, citizenship status, sexual orientation, genetic information, or any other protected status of an individual or that individual's associates or relatives. Wayfair is thus committed to providing a work environment that is free of unlawful discrimination, including harassment that is based on any legally protected status. Wayfair will take all necessary steps to ensure a culture that promotes an environment free of discrimination. Wayfair will not tolerate any form of harassment that violates this policy.

Coverage

This policy forbids any employee, manager, supervisor, officer, director, vendor, client, or agent of the Company to harass any Wayfair employee, applicant, or contractor.

Prohibited Conduct

The conduct prohibited by this policy, whether verbal, physical, or visual, includes any discriminatory employment action and any unwelcome conduct that is inflicted on someone because of that individual's protected status. Among the types of unwelcome conduct prohibited by this policy are epithets, slurs, negative stereotyping, intimidating acts and the circulation or posting of written or graphic materials that show hostility toward individuals because of their protected status. Also prohibited are invasions of another person's personal space, commenting on someone's looks, dress, sexuality or gender in a derogatory or objectifying manner or a manner that makes them uncomfortable. Pursuing or flirting with another person persistently without the other person's willing participation is also strictly prohibited. Wayfair prohibits that conduct in the workplace, even if the conduct is not sufficiently severe or pervasive to constitute unlawful harassment.

Sexual Harassment

Sexual harassment is a problem that deserves special mention. Harassing conduct based on gender often is sexual in nature but sometimes is not. For example, making jokes about somebody's gender is still harassing even when it is not sexual in nature. This policy forbids harassment based on gender regardless of whether the offensive conduct is sexual in nature. Any unwelcome conduct based on gender is also

forbidden by this policy regardless of whether the individual engaged in harassment and the individual being harassed are of the same or are of different genders.

According to the U.S. Equal Employment Opportunity Commission (“EEOC”), unwelcome sexual advances, requests for sexual favors, and other verbal, physical or visual conduct based on sex constitute unlawful sexual harassment when (1) submission to such conduct becomes an implicit or explicit term or condition of employment, (2) submission to or rejection of the conduct is used as the basis for any employment decision, or (3) the conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile or offensive working environment.

This policy forbids harassment based on gender regardless of whether it rises to the level of a legal violation. Examples of gender-based harassment forbidden by this policy include (1) offensive sex-oriented verbal kidding, teasing or jokes; (2) repeated unwanted sexual flirtations, advances or propositions; (3) verbal abuse of a sexual nature; (4) graphic or degrading comments about an individual’s appearance or sexual activity; (5) offensive visual conduct, including leering, making sexual gestures, the display of offensive sexually suggestive objects or pictures, cartoons or posters; (6) unwelcome pressure for sexual activity; (7) offensively suggestive or obscene letters, notes or invitations; (8) offensive physical contact such as patting, grabbing, pinching, or brushing against another’s body; or (9) sexual favoritism.

Sexual Favoritism

This policy also forbids sexual favoritism in the making of any employment decision. Sexual favoritism occurs whenever a supervisor or manager makes a decision based upon an employee’s receptiveness to sexual advances. Wayfair prohibits that conduct even if it is isolated in nature and not sufficiently widespread to create an issue of unlawful conduct.

Employee Responsibility

Everyone at Wayfair can help assure that our workplace is free from prohibited discrimination or harassment. Any employee who witnesses discrimination or harassment has an obligation to report it to their manager or a member of Talent Management.

Avoiding Prohibited Conduct

Everyone is expected to avoid any behavior or conduct that could reasonably be interpreted as prohibited harassment; no employees, not even the highest-ranking individuals at Wayfair, are exempt from the requirements of this policy. Every employee is expected to inform any person in the workplace whose conduct the employee finds unwelcome.

Reporting Prohibited Conduct

Any manager or supervisor who is aware of conduct inconsistent with this policy or who receives a report of conduct inconsistent with this policy is to report it immediately to Talent Management. Employees may also report conduct inconsistent with this policy directly to a manager.

Reporting Procedures

If you feel you have experienced or witnessed any conduct that is inconsistent with this policy, you are to immediately notify Talent Management or any member of the Management team. This is the individual who is authorized by this policy to receive and act upon complaints of harassment on behalf of Wayfair. This policy does not require reporting harassment to any individual who is creating the harassment.

Wayfair Response

All reports describing conduct that is inconsistent with this policy will be investigated promptly. Wayfair may put certain interim measures in place, such as a leave of absence or a transfer, while the investigation proceeds. Wayfair will take further appropriate action once the report has been thoroughly investigated. That action may be a conclusion that a violation occurred, as explained immediately below. Wayfair might also conclude, depending on the circumstances, either that no violation of policy occurred or that Wayfair cannot conclude whether or not a violation occurred.

Wayfair may use corrective action for any inappropriate conduct discovered in investigating reports made under this policy, regardless of whether the conduct amounts to a violation of law or even a violation of this policy. If the person who engaged in harassment is not employed by Wayfair, then Wayfair will take whatever corrective action is reasonable and appropriate under the circumstances. Action taken by management in an individual case does not establish a precedent in other circumstances.

Policy Against Retaliation

Wayfair forbids that any employee treats any other employee or former employee or applicant adversely for reporting harassment, for assisting another employee or applicant in making a report, for cooperating in a harassment investigation, or for filing an administrative claim with the EEOC or a state governmental agency. All employees who experience or witness any conduct they believe to be retaliatory should immediately follow the reporting procedures stated above.

Confidentiality

In investigating and in imposing any discipline, Wayfair will attempt to preserve confidentiality to the extent that the needs of the situation permit.

Acceptance of Policy

All Wayfair employees have a personal responsibility to conduct themselves in compliance with this policy and to report any observations of conduct inconsistent with this policy. If you have any questions concerning this policy, then please contact Talent Management.

Employee Open Door

At Wayfair we believe that all employees should feel welcome, supported and heard. Therefore employees, visitors, and contractors, in all Wayfair properties and/or in properties operated by Wayfair or while conducting business on behalf of Wayfair should maintain an environment of mutual respect and collaboration. To ensure this and support our Equal Employment Opportunity, Harassment / Sexual Harassment and Code of Conduct we have an “Open Door” program for employees to share ideas, provide feedback or express concerns. Our employees are important to us, therefore we’ve established various methods for employees to share information with Leadership.

Open Door-Speak with your Manager, Senior Manager, Site Leader/Director, Talent Manager or Talent team member. These individuals are available to support you, provide you tools and resources, and address your concerns.

Talent Manager-If you have spoken to your Supervisor/Manager and feel your concern has not been sufficiently addressed or you initially prefer not to speak with your Supervisor/Manager about your concerns you are encouraged to speak with Talent Management.

There are multiple ways to connect with Talent Management: (may vary by location)

- Local Talent Team – [Log a Talent Ticket](#), walk-up, email, Google Chat, SLACK or phone • Talent Management Hotline- **801-371-7711**

Lighthouse -Lighthouse Services is an external tool that will allow you to contact the talent management team while ensuring your anonymity. Should you choose to use this external tool, you may report your concerns in any of the following ways:

- **Website:** <https://www.lighthouse-services.com/wayfairtalent>
- **Direct Dial:**
 - English speaking USA and Canada: 833-480-0090
 - Spanish speaking USA and Canada: 800-216-1288
 - French speaking Canada: 855-725-0002
- **E-mail:** reports@lighthouse-services.com (must include company name with report).

Consensual Relationship Policy

Our Consensual Relationship policy outlines our guidelines on employees forming personal relationships with each other.

Wayfair does not want to place undue restrictions on consensual relationships between colleagues, as we acknowledge that freedom of choosing one’s partner is an individual’s right. Wayfair understands that coworkers are going to develop strong friendships and consensual relationships may develop. This policy

EXHIBIT B

WAYFAIR

STATEMENT PROHIBITING HARASSMENT OF EMPLOYEES

POLICY

Harassment Prohibited.

The Wayfair family of companies, (Wayfair, LLC; CastleGate Logistics, Inc.; Wayfair GMBH; Wayfair Ltd; Wayfair Ltd UK; and Wayfair Maine LLC, hereafter referred to as the "Company") is proud of its policy of maintaining a work environment that encourages respect for the dignity of each individual. The Company, therefore, endeavors to maintain a work environment free from unlawful harassment based on sex, sexual orientation, race, color, religious creed, national origin, ancestry, age and disability ("Harassment"). The Company prohibits such Harassment, whether at the office, in outside work assignments or at Company- sponsored social or non-social functions, events or programs. Should such Harassment occur, the Company will take appropriate corrective action to prevent its continuation or recurrence. In addition, the Company will endeavor to prevent the Harassment of its employees by persons who are not Company employees, but who are on the Company's premises or who have a business or other relationship with the Company.

Harassment is unlawful, and any individual found to have engaged in Harassment will be subject to disciplinary action, up to and including termination of employment.

Retaliation Prohibited.

The Company will not permit retaliation of any kind against anyone who complains about Harassment or participates in good faith in an investigation of a Harassment complaint. Such retaliation is unlawful, and any individual found to have engaged in retaliation will be subject to disciplinary action, up to and including termination of employment.

DEFINITIONS

"Harassment" may include communicating, sharing or displaying written or visual material or making verbal comments that are demeaning or derogatory to a person because of his or her sex, sexual orientation, race, color, religious creed, national origin, ancestry, age and disability, including material or comments intended as humor. The use of Company facilities to disseminate, duplicate or display such materials is prohibited.

"Sexual harassment" includes making unwelcome sexual advances, requesting sexual favors or engaging in verbal or physical conduct of a sexual nature which is made a term or condition of employment, or which is used as the basis for employment decisions. "Sexual harassment" also includes any type of sexually-oriented conduct, including conduct intended to be friendly or humorous, that is unwelcome and has the purpose or effect of unreasonably interfering with an employee's work performance or creating a work environment that is intimidating, hostile, offensive or coercive to a reasonable person.

The following is a partial list of conduct which could be considered sexual harassment:

- Threats or insinuations, either explicitly or implicitly, that an individual's refusal to submit to sexual advances or sexual conduct will adversely affect his or her employment, evaluation, wages,

advancement, assigned duties, benefits or any other aspect of employment or career advancement;

- Favoring any applicant or employee because that person has performed or shown a willingness to perform sexual favors for a supervisor;
- Unwelcome sexual jokes, language, epithets, advances or propositions;
- Written or oral abuse of a sexual nature or use of sexually degrading or sexually vulgar words to describe an individual;
- Display of sexually suggestive objects, pictures, posters or cartoons;
- Unwelcome comments about an individual's body, sexual prowess or sexual deficiencies;
- Asking questions about sexual conduct;
- Unwelcome touching, leering, whistling, brushing against the body, or suggestive, insulting or obscene comments or gestures; and
- Assault or coerced sexual acts.

RESPONSIBILITIES

Responsibility of Managers and Supervisors.

Each manager and supervisor has a duty to maintain a workplace free of Harassment, to assure that each individual under his or her supervision or control is aware of the Company's policy on Harassment and the policy's Harassment Resolution Procedure, and to assure such individuals that they need not endure insulting, degrading or exploitative treatment based on sex, sexual orientation, race, color, religious creed, national origin, ancestry, age or disability. Any manager or supervisor who learns of or suspects violations of this policy must promptly bring the matter to the attention of HR Operations.

Responsibility of Individual Employees.

The line between acceptable social conduct and Harassment is not always clear. For that reason, the Company encourages individuals who believe they are being or may have been harassed to communicate clearly to the offending party that the conduct is offensive, intimidating or embarrassing, to explain how the offensive behavior affects the employee's work and to ask that the conduct stop. If the individual is uncomfortable with making such a direct approach to the offending party or has done so, but the perceived harassment has not stopped, then the individual may use the procedure described below to obtain a constructive resolution of the problem.

PROCEDURES

Harassment Resolution Procedure.

An employee who believes he or she may have been harassed in a manner prohibited by this policy is urged to utilize this procedure as soon as possible after a perceived act of Harassment occurs because prompt reporting allows the Company to investigate while the facts are still fresh and to take prompt corrective action, when appropriate. The Company will handle the matter with as much confidentiality as possible under the circumstances and with due regard to the rights and wishes of all parties, recognizing that there are many circumstances where complete confidentiality is

not possible. Upon receipt of a complaint, the Company will promptly undertake an investigation and, when appropriate, corrective action. The following procedures will generally be followed in the case of a complaint:

Filing of a Complaint:

An individual who believes that he or she has been the subject of Harassment should bring his or her complaint to the attention of a supervisor, or HR Operations, 177 Huntington Avenue, Suite 6000, Boston, MA 02115.

Manager's and Supervisor's Duty:

A manager or supervisor receiving a complaint must immediately notify HR Operations who will determine if an investigation is warranted and, if so, will designate one or more fact finders, who will be responsible for conducting a prompt investigation.

Investigation:

The fact finder may ask the individual for a written statement indicating the identity of the alleged offending party and the date, location and nature of the alleged Harassment. As soon as possible thereafter, the fact finder will meet individually with the alleged offending party to inform him or her of the contents of the complaint and provide him or her with an opportunity to respond. If there is a significant dispute of fact, the fact finder may give each party an opportunity to identify persons who can support or corroborate his or her version of the facts. The fact finder may also investigate the matter further by contacting those individuals and/or other individuals whom the fact finder believes may have additional information regarding the issues raised in the complaint.

Resolution:

Based upon the information gathered in the investigation, the fact finder will determine whether the Company's policy was violated and, if appropriate, will recommend corrective action to executive management.

Corrective Action

If the Company determines that an employee has violated this policy, it will take prompt, effective remedial action including imposing corrective action upon the violator. Corrective action includes disciplining the harasser up to and including termination. The nature of the corrective action taken will depend upon the circumstances of the particular case including the nature of the violation and the employment record of the violator. The Company may also require the violator and others to undergo training regarding the policy and laws against harassment.

If the Company determines that a third party has violated this policy, it will take appropriate steps to remedy the problem. Under certain circumstances, the Company may sever the relationship between the Company and the third party. As with employee harassment, the

actions taken will depend upon the details of the particular situation.

Responsible Government Agencies:

Massachusetts Commission Against Discrimination One Ashburton Place Boston,
MA 02108
(617) 727-3990

U.S. Equal Employment Opportunity Commission One
Congress St., 10th Floor, Room 1001 Boston, MA 02114
(617) 565-3200

Questions

If you have any questions, please contact your supervisor, HR Operations.

WAYFAIR RECEIPT

I acknowledge receipt of a copy of the Company's Statement Prohibiting Harassment of Employees.

Signature: _____

Name: _____

Date: _____

EXHIBIT C



Purpose

Wayfair strives to make our Supply Chain sites as safe and hygienic as possible for our employees. To that end, and in light of the COVID-19 pandemic, Wayfair has adopted the following policy to ensure our employees are continuing to promote that goal while in our facilities or on our property.

Effective Date and Scope

This policy is effective on August 10, 2020, and will be in place until further notice. This policy applies to all Wayfair employees working at or visiting our Supply Chain sites, regardless of position or tenure.

Policy

Any employee that is experiencing symptoms of the COVID-19 virus may not report to work, and must contact Talent Management immediately.

Common symptoms included, but are not limited to:

- Fever or Chills;
- Cough;
- Shortness of breath or difficulty breathing;
- Fatigue;
- Muscle or body aches;
- Headache;
- New loss of taste or smell;
- Sore throat;
- Congestion or runny nose;
- Nausea or vomiting;
- Diarrhea

Violations of Policy & Corrective Action

This is considered a serious infraction. Reporting to work while experiencing COVID-19 symptoms may result in corrective action, up to and including termination of your employment.